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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

WENDY KRONICK,

Plaintiff and Appellant,

v.

BOBBY MACKSTON,

Defendant and Respondent.

B231138

(Los Angeles County
Super. Ct. No. SS019839)

APPEAL from an order of the Superior Court of the County of Los Angeles,
Gerald Rosenberg, Judge. Affirmed.

Donna M. Standard for Plaintiff and Appellant.

Law Offices of Thomas J. Feeley, Thomas J. Feeley; Law Offices of Thomas M.
Dempsey and Thomas M. Dempsey for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Wendy Kronick (plaintiff) filed a request for orders to stop harassment pursuant to Code of Civil Procedure section 527.6¹ seeking a restraining order against defendant and respondent Robert Mackston (defendant). She appeals from the trial court's order denying her request, arguing that the trial court abused its discretion when it excluded certain of her witnesses and when it allowed a "legally irrelevant factor" to "color its view of the facts"

We hold that plaintiff forfeited her claim that the trial court erred by excluding witnesses because she failed to make the required offer of proof as to each of those witnesses. We further hold that plaintiff's claim that the trial court considered legally irrelevant testimony has been forfeited and that in any event, any error in admitting and considering the challenged testimony was harmless. We therefore affirm the order denying plaintiff's request for orders to stop harassment.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

FACTUAL BACKGROUND

A. Plaintiff's Testimony

1. *The August 6, 2010, Incident*

Plaintiff knew defendant as someone who lived in her neighborhood near a park² that she frequented with her dog.³ On August 6, 2010, plaintiff walked her dog to the park which was a few blocks from her house. She entered the park through a gate, walked to a bench, sat down, and listened to her Ipod. She had unleashed her dog when she entered the park.

About five minutes after plaintiff sat down, she saw defendant enter the park carrying a beer. He walked around the dirt path that ran along the circumference of the park. As defendant walked behind plaintiff, he slowed his pace which, because of defendant's reputation, put plaintiff "on alert." Defendant then resumed walking to an area of the park that was beyond plaintiff's line of sight. Plaintiff continued listening to her Ipod for another minute before removing the ear plugs so "all [her] senses [were] on alert."

About five minutes later, she noticed defendant walking back toward her. He walked to a location behind the bench on which plaintiff was sitting. Plaintiff's dog was to plaintiff's right, "kind of behind" her. Plaintiff became "very leery" when defendant stopped behind her. At that point, plaintiff stood up, turned to her right, and saw defendant kick her dog "so hard [the dog] yelped and retreated and [cowered]." Plaintiff exclaimed, "What are you doing," to which defendant replied "Your dog bit me"

² Defendant testified that the park in issue "is owned by the residents of the community. H.P.P.O.C. is the Huntington Palisades Property Owners Corporation, and you have to be a member of the Association to use the park. So they are charged with operating the park"

³ Plaintiff described her dog as a seven-month old Dalmatian "puppy."

This is a vicious animal . . . you'll never be allowed in [this] park again, you're in trouble now. You get that dog on a leash. It bit me." Plaintiff was very upset and angry because defendant kicked her dog for no reason. She said, "You know and I know the dog didn't bite you." Defendant replied, "Bitch, I'm going to get you bitch. You'll never be allowed in this park again. I'll get you, you get that dog on a leash right now. Control [the dog] you bitch." Plaintiff was scared, but also very angry, so she yelled, "Don't you ever come near me or my dog again." She thought that if she yelled, someone in the area might hear and come to her aid. She then put her dog on a leash, but defendant continued to say, "Your dog bit me. I have a mark to prove it." Because plaintiff had seen what happened, she believed any such mark was "self-inflicted."

As plaintiff walked towards a park gate, defendant was walking 10 to 15 feet ahead to her left. Plaintiff yelled, "Don't come near me again. Don't ever touch me again. . . . Everybody hates you. Your behavior is disgusting." Defendant stopped, walked back to plaintiff with his hand in a fist and said, "You fucking asswipe cunt. You're going to be sorry. I'm going to hurt you. I'm going to kill you. . . . With any luck you won't be here tomorrow." Plaintiff yelled back, "Do the neighborhood a favor and kill [yourself]." Defendant held his fist a foot and a half away from plaintiff's face. Plaintiff continued, "Leave me alone. Don't ever come near me again." In response, defendant said, "You are as crazy as your fucking asswipe husband. . . . I'll see to it that you're never here again I'm going to call security." Plaintiff retorted, "Well, I'm calling the police."

Defendant left the park and plaintiff called her ex-husband, who in turn called the police, and someone from the department interviewed plaintiff the same day. From the time defendant left the park on August 6, 2010, to the time of plaintiff's testimony in January 2011, she had not had any further contact with defendant.

2. *The Prior Incident*

According to plaintiff, three or four years prior to the August 6, 2010, incident, she and her husband were in the same park with another Dalmatian they owned. Their dog

was off leash. They were the only ones in the park and the dog, which was “very docile,” “wasn’t doing anything.” Nevertheless, defendant approached them and demanded that they “put [their] dog on a leash.” Plaintiff’s husband told defendant to “go mind [his] own business.”

Defendant left the park, but returned with the park rules in hand. He read to them the rule that stated, in essence, “if somebody says, ‘I want you to put your dog on a leash,’ you [must] comply.” Defendant then said, “If you don’t put that fucking dog on a leash I’m going to kick it” and made a motion toward plaintiff’s dog as if to kick it. Plaintiff’s husband replied, “Don’t you dare” and the two men squared off face-to-face with defendant holding his fist in the husband’s face. Plaintiff admonished her husband not to “take the bait.” No punches were thrown and the face-to-face altercation ended. But when plaintiff and her husband left the park, defendant stood in front of his house and yelled “assholes” at them. They ignored defendant and the incident ended. Other than that incident with defendant three or four years prior to the August 6, 2010, incident, plaintiff had no other personal contact or issues with defendant.

B. Plaintiff’s Witness

Elizabeth Thomas-Kim (Kim) testified on plaintiff’s behalf as follows. Kim had two interactions with defendant, but did not know him personally. In late July 2010, she went to the park to meet plaintiff “to have a playdate with [their] dogs.” When she arrived, there was an event taking place in the park. She saw someone sitting on a bench in the park whom she thought might be plaintiff. As she exited her car with her dog in her arms, a man approached her and asked, “Do you know this is a private park?” Kim replied, “Yes, I do. . . . My friend, [plaintiff], invited me here,” to which defendant responded, “That doesn’t matter. . . . You don’t belong here. . . . I know where you live. . . . You live on Fisk” Because Kim had never seen defendant before, she became frightened, entered her car, and left.

Two weeks later, Kim was again in the park, joined by plaintiff and another friend. When plaintiff left to go to another event, Kim and her friend, who lived close by, left the

park through different gates. Kim put her dog in her car and as she was walking around to enter her car, she heard a man yell, looked toward defendant's house, and saw him running at her. She entered her car while defendant approached the driver's side screaming, "Bitch. . . . I'm going to take your dog and throw it over the cliff." He then twice made motions as if he was throwing the dog. Kim replied, "Leave me alone" and drove away. She was frightened and upset.

C. Defendant's Testimony

1. The August 6, 2010, Incident

Defendant knew plaintiff, but he was not her friend and did not socialize with her. On August 6, 2010, defendant and his wife were at their house, which was located across from the park and undergoing construction. They were looking at the progress of the construction when defendant decided to walk to the park to "get some air" While at the park, defendant saw plaintiff with her dog. She was seated on a bench with her back to him and defendant walked past without incident. Plaintiff's dog was running unleashed out in front of her. Defendant proceeded down a dirt path to an overlook point and then returned along the same path. The path passed between a fence and the bench on which plaintiff was sitting listening to her Ipod. Plaintiff's dog was behind her, and as defendant passed, it lunged and bit him. Defendant kicked at the dog "to get it away" and began "making [his] way out of the park." Defendant asked plaintiff, "Can you get your dog under control[?] It just bit me." Plaintiff replied, "Get out of the park. You're not supposed to be here. Get away from me." According to defendant, plaintiff began "ranting" at him. Defendant did not respond, and instead continued to leave the park. He was concerned about his injury, but did not speak to plaintiff about it. He told plaintiff he was going to call security, but denied yelling at plaintiff or calling her a bitch. Defendant did not threaten to kill plaintiff or make any other type of threat against her. Defendant denied raising his fist toward plaintiff and insisted that his hands remained by his sides during the incident.

As defendant was walking toward a park gate, plaintiff followed him, “jawing at [him] the whole time.” She said, “You’re not supposed to be here. Get out of here. This is a dog park,” as defendant tried to move away from her dog. Defendant crossed the street and entered his home.

2. The Prior Incident

Four or more years prior to the August 6, 2010, incident with plaintiff, defendant saw plaintiff and her husband in the park with a Dalmatian and a German Shepard. The German Shepard, which was unleashed, attacked defendant’s dog, and he “had to wrestle [his] dog away from the German Shepard.” Defendant advised plaintiff and her husband that they were required to leash their dog if requested. Plaintiff’s husband told defendant to “mind [his] own business” and advised defendant that he was a “bodybuilder” and could “kick [defendant’s] ass.” Because, at that point, defendant realized he could not reason with plaintiff’s husband, he ended the encounter. Defendant had not had any encounters with plaintiff prior to that incident.

3. The Incidents With Kim

Defendant had seen Kim “a couple” of times prior to his testimony at the hearing on the restraining order. In July 2010, he was at the park which was being set up for a laser-tag event for the children of the residents in the community. When Kim arrived at the park with her dog, defendant informed her that the neighborhood children were having an event and that it was a private park. Kim replied that she was there at the invitation of plaintiff. Defendant then advised Kim that a nonresident was not allowed to bring his or her dog to the park, even if the nonresident was a guest of a resident. Defendant had seen Kim as a repeat visitor to the park with her dog, and he had seen the private security guards speak to her about her dog.

On a separate occasion, defendant approached Kim while she was in her car and again informed her that nonresidents were not allowed to bring their dogs to the park. Defendant denied calling Kim a bitch or threatening her dog during that incident.

Defendant was concerned about violations of the park's rules because, when his daughter was a toddler, she was attacked in the park by a dog that "ripped a pigtail out of her head with a lump of her scalp."

PROCEDURAL BACKGROUND

Using the required judicial council forms, plaintiff filed a request for orders to stop harassment under section 527.6 seeking to restrain defendant from harassing her, and defendant filed an answer. The trial court, Judge Lisa Hart Cole, presiding, held a hearing on the request and, after considering documents submitted by the parties and the testimony of the parties' respective witnesses, issued a restraining order against defendant. Defendant then moved for a new trial on the restraining order, which motion Judge Cole granted. A new trial judge, Judge Gerald Rosenberg, held a second trial on the request for orders to stop harassment and, after considering the documents admitted into evidence and the testimony of plaintiff, her witness Kim, and defendant,⁴ denied the request for a restraining order.

DISCUSSION

A. Standard of Review

"Under [section 527.6,] subdivision (d), a *permanent injunction* shall issue upon a finding by clear and convincing evidence that the defendant engaged in unlawful violence." (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 403.) A trial court's decision to grant a permanent injunction rests within its sound discretion and will not be disturbed without a showing of a clear abuse of discretion. (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.) In determining whether the trial court abused its

⁴ Plaintiff's request for judicial notice of documents and evidence not introduced at the hearing is denied.

discretion when there are disputed factual issues, we review the trial court's findings under the substantial evidence standard, resolving all factual conflicts and questions of credibility in the respondent's favor and drawing all legitimate and reasonable inferences to uphold the judgment, so long as it is supported by evidence that is reasonable, credible and of solid value. (*Ibid*; *Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 [determined "whether substantial evidence supports the requisite elements of willful harassment, as defined in Code of Civil Procedure section 527.6, . . ."].)

B. Exclusion of Witnesses

Plaintiff contends that the trial court abused its discretion by allowing her to call only one of the several witnesses who were available in court to testify on her behalf. According to plaintiff, the witnesses who were not permitted to testify would have confirmed that defendant had harassed them in the park in a manner that was similar to his conduct during the incident with plaintiff and some of them would also have contradicted defendant's testimony denying such harassment.

1. Background

At the beginning of the hearing on plaintiff's request for orders to stop harassment, the trial court explained the manner in which the hearing would proceed. "[T]he way that I will handle the case is as follows: I am going to question witnesses first and then I will allow the attorneys to ask questions. *I'm going to need an offer of proof as to each proposed witness.* And I may not hear from some of these folks, because I don't want to hear the same person come up and tell me the same thing 10 times. . . . So I may ask you to choose. If you brought five witnesses I may ask you to give me your best one or two in terms of what you're trying to prove to the court." (Italics added.)

After the trial court finished questioning plaintiff and defendant, it explained its tentative view of the evidence to assist counsel in focusing their questioning of the parties. The trial court then had the following exchange with plaintiff's counsel. "[The Court]: So the one thing I really want to avoid here, I don't want to make this into 10

mini trials because [plaintiff's witnesses] don't have requests for restraining order against [defendant]. So I'm assuming that the reason you even want me to hear any of this is because you feel it would show me that he's involved in a similar course of conduct as to others. [¶] [Plaintiff's Counsel]: Correct. [¶] [The Court]: But, you know, I'm going to be hard pressed, because each one of these folks has got a different story here about what—I'll take one of these people and we'll see where it goes, but we're not going to go too far with it. I'm going to give you a short leash, so you figure out your best witness and bring that person in. But the minute I see we're going off in another direction we're going to stop, because I'm not trying a separate case involving somebody else's claim that he's harassing them. [¶] [Plaintiff's Counsel]: It's more of a pattern of behavior and a habit that he's now developed and he's making people in the park, not just my client—he makes my client very nervous because he has a vantage point from his home where he could do some great damage. [¶] . . . [¶] [Plaintiff's Counsel]: Then I would just want to call my witnesses. [¶] [The Court]: I'm going to let you call one, I want to see where it goes”

Following that exchange, the trial court allowed both parties' counsel to examine plaintiff and defendant. After plaintiff and defendant finished testifying, the trial court directed plaintiff's counsel to “bring in [her] best witness on behalf of plaintiff.” Kim was then examined by counsel, followed by a further examination of defendant by the trial court concerning defendant's version of the incidents with Kim. Thereafter, the trial court excused Kim and informed counsel that the evidentiary phase of the proceeding had concluded, stating, “I am going to make some comments and . . . give each attorney a minute or two to present an argument.” During its comments, the trial court explained, *inter alia*, that plaintiff had not presented enough evidence “to get over this legal hurdle of showing the court that there was a credible threat of violence.” Without mentioning any other witnesses, or making any offer of proof, plaintiff's counsel proceeded to argue. During her argument, however, plaintiff's counsel suggested that she would have called other witnesses if the trial court would have allowed her, but she did not identify those witnesses, or provide a specific offer of proof as to the testimony each such witness

would provide. After plaintiff’s counsel and defense counsel concluded their arguments, the trial court denied the request for orders to stop harassment.

2. *Legal Principles*

“On appeal, we may not reverse a judgment for the erroneous exclusion of evidence unless ‘[t]he substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means.’ (Evid. Code, § 354, subd. (a).)” (*People v. Vines* (2011) 51 Cal.4th 830, 868-869.) ““It is the burden of the proponent of evidence to establish its relevance through an offer of proof or otherwise,” and a specific offer of proof is necessary in order to preserve an evidentiary ruling for appeal. [Citation.]’ (*People v. Brady* (2005) 129 Cal.App.4th 1314, 1332 [29 Cal.Rptr.3d 286].)” (*Magic Kitchen LLC v. Good Things Internat., Ltd.* (2007) 153 Cal.App.4th 1144, 1165.)

3. *Analysis*

In this case, although plaintiff’s counsel made general references to other witnesses and the nature of their testimony, she did not identify them for the record or provide a specific offer of proof concerning the proposed testimony of each, despite the trial court’s direction that it would require such an offer as to each proposed witness. Moreover, when the trial court indicated that it would restrict plaintiff’s witnesses to the “best one” plaintiff had to offer, plaintiff’s counsel did not object to that limitation or take exception to it. To the contrary, in compliance with the trial court’s directive, plaintiff’s counsel called Kim, examined her, and then proceeded to argue without objection or protest, despite the trial court’s statement that after the testimony of one witness, “I want to see where it goes. . . .” Although plaintiff’s counsel did state during argument that she would have called other witnesses if the trial court would have allowed them to testify, she stopped short of identifying those witnesses and providing the substance of their testimony. Because plaintiff’s counsel failed to make an offer of proof as to each witness she intended to call, the issue concerning their exclusion was not preserved for appeal.

C. Irrelevant Factor

1. Background

Following its examination of plaintiff and defendant, the trial court engaged in a discussion with plaintiff's counsel during which the court explained that the request for an injunction under section 527.6 could either be based on a course of conduct or a credible threat of violence. The following exchange then took place between the trial court and plaintiff's counsel: "[The Court]: I assume that you're going on the prong credible threat of violence. [¶] [Plaintiff's Counsel]: Correct. [¶] [The Court]: Because if you went on the course of conduct, I basically have two incidents that she talks about the encounter on August 6, 2010 and what occurred three, four, five years ago, but looking at it, it doesn't seem to be enough. [¶] But in terms of credible threat of violence, the statute talks about—or it defines credible threat of violence 'a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family and that serves no legitimate purpose.' [¶] Now, some comments about this so you kind of know at least where I'm going, what my thinking is based upon what these two parties have stated and I'll let you ask your questions. I believe that you're going to zero in on two main things; one would be the threat 'I'm going to kill you,' and, two, the lifting of his right hand into a fist and bringing it one to one-and-a-half feet from [plaintiff's] face. All right."

At the end of his testimony concerning the incidents with Kim, defendant provided the following explanation in response to the trial court's inquiry about why defendant seemed to be concerned about violations of the park's rules. "[Defendant]: It pretty much started for me when my daughter was a toddler and was attacked by a dog that ripped a pig tail out of her head with a lump of her scalp. And I tried to impress the dangers that were being created to the H.P.P.O.C. to try to get them to take some action to make it a safe place."

2. *Legal Principles*

“[Former s]ection 527.6 provides injunctive relief to a person who has suffered harassment. Harassment is defined in part as ‘unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.’ (§ 527.6, subd. (b).) Unlawful conduct is further defined to include ‘any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.’ (§ 527.6, subd. (b)(1).) ‘If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years.’ (§ 527.6, subd. (d).) “‘Clear and convincing’ evidence requires a finding of high probability.’ (*In re Angelia P.* (1981) 28 Cal.3d 908, 919 [171 Cal.Rptr. 637, 623 P.2d 198].)” (*Russell v. Douvan, supra*, 112 Cal.App.4th at p. 401.) [¶] “Subdivision (d) of section 527.6 addresses the requirements for obtaining a permanent injunction. The subdivision provides in part: ‘If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment.’” (*Id.* at 402.)

“Section 527.6 is intended ‘to protect the individual’s right to pursue safety, happiness and privacy as guaranteed by the California Constitution.’ (Stats. 1978, ch. 1307, § 1, p. 4294; see Cal. Const. art. I, § 1.) The court in *Smith v. Silvey* (1983) 149 Cal.App.3d 400 [197 Cal.Rptr. 15], recounted a portion of the legislative history in order to explain the statute’s purpose: ‘An analysis prepared for the Senate Committee on Judiciary (1977–1978 Reg. Sess.—Assem. Bill No. 3093) saw the purpose as follows: “Under existing law, a victim of harassment may bring a tort action based either on invasion of privacy or on intentional infliction of emotional distress. Where great or irreparable injury is threatened, such victim may obtain an injunction under procedures detailed in C.C.P. Sec. 527(a). [¶] This bill would establish an expedited procedure for enjoining acts of ‘harassment’ as defined, including the use of temporary restraining orders. . . . [¶] The purpose of the bill is to provide quick relief to harassed persons.”’

(*Id.* at p. 405.) It follows that *if there is no likelihood of future harm, there is no necessity for an expedited procedure for relief*. Indeed, under subdivision (d) a court cannot issue an injunction unless it finds by clear and convincing evidence that ‘unlawful harassment exists’ (§ 527.6, subd. (d), italics added), not that it existed in the past.” (*Russell v. Douvan*, *supra*, 112 Cal.App.4th at p. 403, italics added.)

3. Analysis

Plaintiff contends that the trial court considered a “legally irrelevant” factor in ruling on her request for orders to stop harassment. According to plaintiff, the trial court erroneously relied on defendant’s statement that his toddler daughter had been attacked and injured by a dog in the park some unspecified number of years earlier. As plaintiff views the evidence, that prior incident was too remote to support a finding that defendant had a legitimate reason for being concerned about unleashed dogs and his safety in the park, and, in any event, it did not provide an excuse for defendant’s assault on plaintiff.

Although plaintiff casts her contention in terms of legal error, she is in fact challenging an evidentiary ruling of the trial court—the court’s admission and consideration of defendant’s testimony about the prior attack on his daughter by a dog in the park. Plaintiff, however, did not object to that testimony on relevance or any other grounds. She has therefore forfeited that contention. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264 [“The forfeiture rule generally applies in all civil and criminal proceedings]; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400, pp. 458-459; 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Reversible Error, § 37, pp. 497-500.) The rule is designed to advance efficiency and deter gamesmanship. As we explained in *People v. Simon* (2001) 25 Cal.4th 1082: ““““The purpose of the general doctrine of waiver [or forfeiture] is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had”” [Citation.]”” (*Id.* at p. 1103.)

Even if plaintiff did not forfeit her relevance argument, it does not appear that the trial court abused its discretion in admitting and considering that testimony. “A trial

court's admission of evidence . . . is reviewed for abuse of discretion. [Citations.] The trial court's ruling will not be disturbed in the absence of a showing it exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a miscarriage of justice. [Citation.]" (*People v. Avitia* (2005) 127 Cal.App.4th 185, 193.)

As discussed above, during trial, plaintiff limited the basis of her request under section 527.6 to the "credible threat" prong of that statute. As the trial court noted, that limitation focused the analysis on whether defendant threatened to kill plaintiff or raised his fist to her face during the altercation, both as claimed by plaintiff. Defendant denied that he threatened to kill plaintiff or raised his fist during the altercation, testimony which raised a credibility issue for the trial court to determine. Under the applicable substantial evidence standard discussed above, on appeal we must presume the trial court believed defendant and disbelieved plaintiff on those two issues or presume the trial court found that due to the conflict in testimony, plaintiff had not proved the threats by clear and convincing evidence. It appears that the court relied on the challenged evidence only to give a context to defendant's request to plaintiff to leash her dog. Because that request triggered the ultimate altercation, evidence relating to it was relevant and did not "color" the trial court's separate credibility determination of whether the threats were made.

Even if defendant's testimony concerning the prior attack involving his daughter was irrelevant to the issues of whether defendant threatened to kill plaintiff or raised his fist, any such error was harmless. (*People v. Cahill* (1993) 5 Cal.4th 478, 509-510, fn. 17 [holding that the erroneous admission of evidence, such as an involuntary confession, is subject to harmless error analysis under the California Constitution]; see also *People v. Concha* (2010) 182 Cal.App.4th 1072, 1086 [erroneous admission and exclusion of evidence subject to harmless error analysis].) Here, the trial court did not "excuse" defendant's threats based on his testimony about the prior attack on his daughter, as plaintiff contends. It considered that evidence to place in context defendant's request to plaintiff to leash her dog, and then went on to determine either that the threats were not made or they were not shown by clear and convincing evidence. Thus, even if the

testimony about the prior attack had been excluded, the outcome on the credibility determination would have been the same.

Moreover, even if we assume that but for the claimed error, the outcome on the credibility issues would have been different—i.e., the trial court would have found the threats were made—there was insufficient evidence of the likelihood that defendant would make future similar threats. As discussed above, section 527.6 is intended to address future harm, not to redress past harm. (*Russell v. Douvan, supra*, 112 Cal.App.4th at p. 403.) Although there was evidence in this case that defendant, on a single occasion, threatened plaintiff and raised his fist to her face, there was no evidence that he had threatened to harm her in the past and insufficient evidence under the clear and convincing standard to support a reasonable inference that he was likely to threaten to harm her in the future. The record describes an isolated incident and, even when the prior incident involving her husband three or four years prior is considered, it does not support an inference of future threats or harm. (*Ibid.*)

Even under plaintiff's version of that prior incident, defendant did not threaten her. At best, he argued with plaintiff's husband and threatened to kick the couple's dog. Similarly, Kim's testimony about prior incidents with defendant does not support a reasonable inference that defendant would likely threaten to harm plaintiff in the future. Again, no threat of harm was made to Kim. Rather, defendant threatened her dog. That defendant had in the recent past threatened Kim's dog cannot be a reasonable factual basis upon which to conclude that defendant was likely to threaten physical harm to plaintiff, who was not party to either incident involving Kim. In addition, plaintiff admitted during questioning by the trial court that, other than the two incidents in which she was involved, she had not been personally involved in any others and there had been no incidents or contact with defendant since the August 6, 2010 incident. Neither the prior incidents nor the incident in question were sufficient to support a clear and convincing inference that defendant was likely to make similar threats to plaintiff in the future.

DISPOSITION

The order denying plaintiff's request for orders to stop harassment is affirmed.
Defendant shall recover his costs on appeal.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.